IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 8004 of 2004

Nivrutti Ganu Gholap .. Petitioner

versus

Rakhamaji Ishwara Gholap Since deceased through LRs .. Respondents

...

Mr.Umesh Mankapure for the petitoner.

Mr.Vikas M. Mali for respondent nos.1A to 1F.

CORAM : D.G. KARNIK, J

DATED : 23rd April 2007.

P.C.:

1. Heard learned counsel for the petitioner and respondent nos.1A to 1F. None present for respondent no.1G.

2. By this petition, the petitioner challenges the order dated 12th August 1997 passed in Execution

Petition no.55 of 1992 and the order dated 17th July 2004 passed in Final Decree Application no.2 of 2004 passed by the Civil Judge, Junior Division Shirala.

3. Father of the petitioner filed a suit for partition and separate possession of the suit property. After decree an execution petition bearing E.P. No.55 of 1992 was filed by the petitioner for physical division and partition of the house property. In the said execution petition, a Court Commissioner was appointed by the Court for suggesting division of the house property. By an order dated 12th August 1997, the Court directed the Court Commissioner to visit the property and submit his report along with rough map suggesting partition of the property. That order was passed in the year 1997 and has not been challenged by the petition for 7 long years. In the circumstances, the challenge to the said order cannot be entertained. Besides, I see nothing wrong in appointing a Court Commissioner and directing him to visit the property and prepare a map for suggesting division of the property. Therefore, the challenge of that order deserves to be rejected.

4. By an order dated 17th July 2004 passed in

Final Decree Application no.2 of 2004, the Court rejected the report submitted by the previous Court Commissioner for suggesting division in the light of its previous order dated 12th August 1997. That order is also impugned in this petition.

5. Learned counsel for the petitioner submitted that the new Court Commissioner may not take into consideration the original decree. In my view, the fear is misplaced as the order dated 17th July 2004 specifically direct: "Court Commissioner would take into consideration the decree of the Court and order dated 12th August 1997".

6. No ground for interference is made out. Writ Petition is accordingly rejected summarily.

(D.G. KARNIK, J)